INDEX

	Page
Opinions Below	1
Jurisdiction	2
Question Presented	2
Statutes and Regulations Involved	3
Statement	6
Specification of Errors to be Urged	11
Reasons for Granting the Writ	12
Conclusion	21
Appendix A	22
Appendix B	34

CITATIONS

Cases:

American Construction Co. v. *Jacksonville, T. & K. Ry.*, 148 U. S. 372	9
Brandaw v. *United States*, 35 F. (2d) 181	18
Hamilton-Brown Shoe Co. v. *Wolf Bros.*, 240 U. S. 251	9
Luminous Unit Co. v. *Freeman-Sweet Co.*, 3 F. (2d) 577	9
New York, Chicago & St. Louis R. Co. v. *Frank*, 314 U. S. 360	13
Norwegian Nitrogen Products Co. v. *United States*, 288 U. S. 294	13
Reynolds Spring Co. v. *L. A. Young Industries*, 101 F. (2d) 257	9
Robertson v. *Downing*, 127 U. S. 607	13
Rogers v. *Hill*, 289 U. S. 582	10
United States v. *Citizens Loan & Trust Co.*, 316 U. S. 209	13
United States v. *Jackson*, 280 U. S. 183	13
United States v. *Madigan*, 300 U. S. 500	13
United States v. *Moore*, 95 U. S. 760	13
United States v. *Searls*, 49 F. (2d) 224	20, 21
Van Pelt v. *United States*, 134 F. (2d) 735	1, 6

Statutes:

Section 300 of the War Risk Insurance Act, October 6, 1917,	
As amended June 25, 1918 (40 Stat. 611)	15
As amended August 9, 1921 (42 Stat. 153)	15
As amended March 4, 1923 (42 Stat. 1522)	3, 15
Section 200 of the World War Veterans' Act,	
As amended June 7, 1924 (43 Stat. 615)	3, 16
As amended March 4, 1925 (43 Stat. 1304)	4
As amended July 2, 1926 (44 Stat. 793)	2, 3, 16
As amended July 3, 1930 (46 Stat. 995)	4
Section 304 of the World War Veterans' Act, (38 U. S. C. 515)	5, 12, 14, 16, 21

602130—44——1

Page

Miscellaneous:
Section 4112 of Veterans' Bureau Regulation No. 138 (Regulations and Procedure, U. S. Veterans' Bureau, p. 175) -- 5
Senate Report 885, 71st Cong., 2d Sess., p. 8 ---------- 18, 19
Hearings before Committee on Finance, U. S. Senate, 69th Cong., 1st Sess., on H. R. 12175, p. 27 ---------- 17
Congressional Record, Vol. 56, Part 7, pp. 6925, 6933 ---- 15
Annual Report of Director, U. S. Veterans' Bureau, for 1928, p. 23 ---------- 12
Letter from Administrator of Veterans' Affairs to Assistant Attorney General, dated March 28, 1944 ---------- 34

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 313

UNITED STATES OF AMERICA, PETITIONER

v.

WILLARD F. VAN PELT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the above-entitled case.

OPINIONS BELOW

The District Court of the United States for the Southern District of Ohio rendered no opinion. The appeal to the Circuit Court of Appeals for the Sixth Circuit was disposed of by a judgment (R. 17) which recited that the judgment below was affirmed on the authority of the court's opinion upon a prior appeal in the same case, *Van Pelt* v. *United States,* 134 F. 2d) 735.[1]

[1] Since this opinion is not contained in the present record, it is copied in Appendix A (*infra*, pp. 22–23) for the convenience of the Court.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on May 1, 1944 (R. 17). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Respondent brought suit for insurance benefits by reason of total permanent disability resulting from syphilis, a disease for which he had first been treated prior to his induction into military service during World War I. The Government defended upon the ground of fraud in that the insurance had been reinstated as a result of false representations denying the existence of prior syphilitic infection and treatment therefor. Section 200, World War Veterans' Act, as worded in 1927, when the reinstatement was effected (*infra*, pp. 3–4), provided that, "for the purposes of this Act," a veteran should be held and taken "to have been in sound condition when examined, accepted, and enrolled for service."

The question is whether the presumption in Section 200 renders immaterial, and therefore not fraudulent, respondent's false representations upon his application for reinstatement of insurance, which were otherwise concededly material and in all other respects fraudulent.

STATUTES AND REGULATIONS INVOLVED

The provision of the statute directly involved was contained in Section 200 of the World War Veterans' Act, as worded from July 2, 1926, to July 3, 1930 (44 Stat. 793).[2] In the following excerpts from that statute we have supplied emphasis to indicate the pertinent provision:

> For death or disability resulting from personal injury suffered or disease contracted in the military or naval service * * * or for an aggravation or recurrence of a disability existing prior to examination, acceptance, and enrollment for service, when such aggravation was suffered or contracted in, or such recurrence was caused by, the military or naval service * * * the United States shall pay * * * compensation as hereinafter provided * * *. *That for the purposes of this Act every such officer, enlisted man, or other member * * * shall be conclusively held and taken to have been in sound condition when examined, accepted, and enrolled for service, except as to de-*

[2] The present statutory provisions prescribing benefits for veterans of the first World War are contained in the World War Veterans' Act of June 7, 1924, as amended. This Act repealed the War Risk Insurance Act of October 6, 1917, which prescribed such benefits prior to June 7, 1924. However, many of the provisions of the War Risk Insurance Act were reenacted without substantial change as part of the World War Veterans' Act. The substance of the legislation now contained in Section 200 of the World War Veterans' Act was formerly embodied in Section 300 of the War Risk Insurance Act.

> *fects, disorders, or infirmities made of record * * * at the time of, or prior to, inception of active service, to the extent to which any such defect, disorder, or infirmity was so made of record: Provided,* That an ex-service man who is shown to have or, if deceased, to have had, prior to January 1, 1925, neuropsychiatric disease and spinal meningitis, an active tuberculosis disease, paralysis agitans, encephalitis lethargica, or amoebic dysentery developing a 10 per centum degree of disability or more * * * shall be presumed to have acquired his disability in such service * * * or to have suffered an aggravation of a preexisting neuropsychiatric disease and spinal meningitis, tuberculosis, paralysis agitans, encephalitis lethargica, or amoebic dysentery in such service * * *.

Prior to July 2, 1926, the words "for the purposes of this section" appeared in lieu of the words "for the purposes of this Act" italicized above (43 Stat. 1304). On July 3, 1930, the words "for the purposes of this section and section 304" were substituted for the words "for the purposes of this Act" (46 Stat. 995).

The application for reinstatement of insurance was made under Veterans' Bureau Regulation No. 138 permitting reinstatement and conversion of lapsed term insurance upon the payment of two premiums—one for the grace period upon the lapsed insurance and one for the month in which

the reinstatement and conversion is effected—provided:

> (b) * * * the applicant is in good health and so states in his application and submits a report of a complete medical examination and such other evidence relative to his physical and mental condition and insurability as may be required by the director and on such forms as the director may prescribe. (Section 4112, Regulation No. 138, Regulations and Procedure, U. S. Veterans' Bureau, p. 175.)

Section 304, World War Veterans' Act, provides another and different type of reinstatement which, while not invoked by respondent, and perhaps inapplicable to the facts of his case, is set out, in pertinent part, because knowledge of it is essential to an understanding of Section 200, World War Veterans' Act, as amended in 1926. Section 304 (38 U. S. C. 515) provides:

> In the event that all provisions of the rules and regulations other than the requirements as to the physical condition of the applicant for insurance have been complied with an application for reinstatement * * * may be approved * * *: Provided, That the applicant's disability is the result of an injury or disease, or of an aggravation thereof, suffered or contracted in the active military or naval service during the World War: Provided further, That the applicant during his lifetime submits proof satisfactory to the director show-

> ing that he is not totally and permanently disabled. As a condition, however, * * * the applicant shall be required to pay all the back monthly premiums which would have become payable if such insurance had not lapsed, together with interest at the rate of 5 per centum per annum * * *: Provided further, That where * * *: proof * * * is furnished showing the applicant is unable to pay such premiums * * * the application may be approved, and the amount of unpaid premiums with interest as provided in this section shall be placed as an interest-bearing indebtedness against the insurance * * *. [~~Italic supplied.~~]

STATEMENT

The District Judge entered judgment for respondent on the pleadings, considering himself bound by an earlier decision of the Circuit Court of Appeals for the Sixth Circuit in the same case—*Van Pelt* v. *United States,* 134 F. (2d) 735 (Appendix A, *infra,* pp. 22–23)—rendered under the following circumstances:

A prior trial of the present suit resulted in a verdict and judgment in favor of the Government. Respondent appealed, and the Government, consenting to a new trial, confessed error with respect to the court's charge to the jury upon a point unrelated to the question presented by the present record. The Circuit Court of Appeals

reversed and ordered a new trial, agreeing with the Government's position in its confession of error[3] but holding also that the statutory presumption in Section 200, that veterans shall be held to have been in sound condition at the time of induction into service, rendered immaterial respondent's misrepresentations, in applying for reinstatement of the insurance sued on, regarding his syphilitic infection and treatment therefor prior to his military service.[4]

Under the present record the facts asserted in the pleadings and not denied, and therefore to be regarded as true in testing the validity of the judgment entered on the pleadings, are as follows:

Respondent has been totally permanently disabled since May 9, 1934. His insurance was in force on that date unless invalid because of fraud in its reinstatement. He had permitted a $10,000 policy of yearly renewable term insurance to lapse

[3] The trial court erroneously instructed the jury that respondent was required to prove total permanent disability as of March 1935. The Circuit Court of Appeals in its opinion, although not directly referring to the Government's confession of error, correctly held that "In order to sustain his cause of action under the pleadings and proof, appellant was required to show total permanent disability only subsequent to 1939" (Appendix A, *infra*, p. 33).

[4] Because of its confession of error on an unrelated point and the absence of contention by respondent, the Government did not anticipate a decision on this basis. The point was only briefly touched upon by the Government in connection with a different, although related, contention advanced by respondent.

602130—44——2

on or about July 1, 1919, for failure to pay the agreed premium. He applied for reinstatement of $5,000 of this lapsed insurance on June 29, 1927, and simultaneous conversion of it to the policy of United States Government life insurance sued on. (R. 2, 5–6.) The application for reinstatement, executed upon a prescribed form, contained representations disclosed by the following questions and answers:

> 11. Have you ever been treated for any disease of brain or nerves? *No.* Throat or lungs? *No.* Heart or blood vessels? *No.* Stomach, liver, intestines? *No.* Kidney or bladder? *No.* Genito-urinary organs? *No.* Skin? *No.* Glands? *No.* Ear or eye? *No.* Bones? *No.* (Answer each "Yes" or "No." If "Yes," describe fully and give dates.) (R. 7.)

As part of his application respondent submitted a report of a medical examination by a physician of his own choice and represented to the physician, and through him to the Government, that he had never had syphilis (R. 8). Those representations were false, because respondent had in fact been treated for syphilis in 1915 or 1916, or both of those years. They were made by him with knowledge of their falsity and with the intention to deceive the Government and induce reinstatement of the policy, and they were material and were relied upon by the Government. (R. 8–9.)

Judgment having been entered against it on the pleadings, the Government appealed. The Circuit Court of Appeals entered a judgment affirming the judgment below upon the authority of its opinion on the prior appeal (Appendix A, *infra*, pp. 22–23) (R. 17). The judgment of the Circuit Court of Appeals recognizes that that court was not bound by its own earlier opinion [5] and, although it recites a reconsideration of the merits of the appeal, it contains no discussion of the merits.[6]

---

[5] Cf. *Reynolds Spring Co.* v. *L. A. Young Industries*, 101 F. (2d) 257, 259 (C. C. A. 6); *Luminous Unit Co.* v. *Freeman-Sweet Co.*, 3 F. (2d) 577, 580 (C. C. A. 7).

[6] The judgment is principally devoted to a criticism of the Government for not seeking either a rehearing by the Circuit Court of Appeals or review by this Court on certiorari of the decision upon the first appeal (R. 17). Insofar as rehearing is concerned, modification of the prior opinion was not sought because the record then before the court was not deemed an appropriate vehicle to present the point decided. In respect of certiorari, in addition to the state of the record, it should be pointed out that the Government had invited reversal of the judgment in its favor in the district court by its confession of error. Moreover, unlike the present judgment, the prior judgment of the Circuit Court of Appeals was not final, and the record upon which that judgment was based disclosed other issues upon which the case might be finally disposed of upon retrial, rendering unnecessary review by this Court of the question here presented. (Cf. *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*, 240 U. S. 251, 258; *American Construction Co.* v. *Jacksonville, T. & K. Ry.*, 148 U. S. 372, 378.) Proceedings in the trial court on remand have eliminated these additional issues except, possibly, that in the event of reversal of the present judgment respondent could deny fraud as a matter of fact. Failure,

In its opinion, upon the first appeal (Appendix A, *infra*, pp. 22–23), the court did not refer to the administrative construction of the statutory provisions involved, the legislative history, or earlier judicial interpretation. It apparently thought that the Government conceded that for the purpose of reinstating insurance under the statute (*i. e.*, under Section 304), the presumption contained in Section 200 prevented inquiry as to preservice illness and treatment and viewed the Government's contention as being that reinstatement under the regulations should be different in this respect because the regulations should not be regarded as covered by the phrase "for the purposes of this Act" (see Appendix A, *infra*, pp. 24–26, 28–30). The court reasoned that the regulations, having been issued pursuant to the authority of the Act, were to be regarded as a part of the Act as truly as the statutory provisions themselves; that, therefore, the effect of the presumption for the purpose of reinstatement under the statute and for reinstatement under the regulations should be the same, with the result that inquiry in the present case, for reinstatement under the regulations, was prevented as to preservice illness and treatment. The court seems to have been motivated by the view that it was merely harmonizing

---

of course, to seek review of an erroneous holding prior to final judgment is no impediment to review of the holding after final judgment. *Rogers* v. *Hill*, 289 U. S. 582.

the procedure for reinstatment under the regulations with the procedure which it thought the Government had conceded was applicable for reinstatement under the statute.[7]

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that, for the purpose of ascertaining whether an applicant for reinstatement of insurance in 1927 was then in good health, the Director of the Veterans' Bureau was without authority to inquire as to the state of the applicant's health prior to his military service.

2. In holding, in effect, that respondent's misrepresentations, otherwise fraudulent, were intended by Congress to be excused.

3. In holding invalid the administrative construction of the presumption in Section 200 regarding the sound condition of veterans at the time of induction into service.

4. In affirming the judgment of the District Court.

[7] However, the Government's concession in the Circuit Court of Appeals, which was in accord with its present position as shown hereinafter (pp. 12, 16–20), was only that the presumption in Section 200 applied to reinstatements under Section 304 for the purpose of establishing service connection of disability, as required by that section, but not for the purpose of preventing inquiry as to preservice illness and treatment for the purpose of determining that the applicant was not totally permanently disabled, also required by Section 304.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals invalidates a procedure under which hundreds of thousands of applications for reinstatement of insurance were acted upon by the Veterans' Administration.[8] It holds directly that inquiries contained in all applications for reinstatement under the regulations between July 2, 1926, and July 3, 1930, were unauthorized insofar as they related to preservice illness and treatment. The decision also rests apparently upon a mistaken assumption that such inquiries have been regarded as unauthorized administratively for the purpose of reinstatements under the statute (*i. e.*, under Section 304) since July 2, 1926.

The Veterans' Administration and its predecessors have consistently for nearly twenty-five years followed the practice, heretofore unquestioned, of obtaining from all applicants for reinstatement of insurance, both under the statute and the regulations, information regarding all past illnesses and treatment in respect of such diseases and disorders as it deemed of consequence in determining the current state of health and insurability of the applicant.[9]

---

[8] Thus approximately 245,000 were acted upon in the fiscal year ending June 30, 1928, the year in which the insurance here sued on was reinstated. See *Annual Report of the Director of the United States Veterans' Bureau for 1928*, p. 23.

[9] See letter from the Administrator of Veterans' Affairs (Appendix B, *infra*, pp. 34–36) and the form of application

This Court has steadfastly adhered to the proposition that the construction placed upon statutory provisions by the officials having the duty of administering them will be presumed to be correct and will not be disturbed judicially unless it is clearly wrong. *United States* v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; *United States* v. *Moore*, 95 U. S. 760, 763; *Robertson* v. *Downing*, 127 U. S. 607, 613; *United States* v. *Jackson*, 280 U. S. 183, 193; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *Madigan*, 300 U. S. 500, 505; *New York, Chicago & St. Louis R. Co.* v. *Frank*, 314 U. S. 360, 372.

2. The administrative construction is in accord with the legislative history of the provisions in question and gives those provisions the full effect which Congress intended. Moreover, the administrative construction has been approved by Congress in repudiating an inconsistent judicial interpretation, in connection with a different problem, and is supported by judicial rejection of the same inconsistent interpretation. Also, the construction given by the court below achieves an unconscionable discrimination between veterans which hardly could have been intended by Congress.

The presumptions in Section 200 of (1) sound condition at the time of examination, acceptance,

---

for reinstatement, Form 742 (Appendix B, *infra*, pp. 37–38), employed by the Administration in the case of all applications for reinstatement, a form which was in use as early as July 1920.

and enrollment for service (directly involved in the present case) and of (2) the service origin of disabilities manifested subsequent to service but prior to January 1, 1925 (not directly involved in the present case but essential to an understanding of the problem presented), were provided by amendatory legislation enacted at different times but for a single purpose. The single purpose was to establish or aid in the establishment of service connection of disabilities which, absent the presumptions, might have been regarded as having been incurred either before or after the period of service. These presumptions were originally specifically restricted to compensation matters, and this restriction was removed only after service connection of disability became significant with respect to insurance as a result of the enactment of the legislation now embodied in Section 304, World War Vetrans' Act, *supra,* pp. 5–6. The single purpose of the presumptions—as an aid to the establishment of the service connection of disabilities—was not altered at any time.

The presumptions were enacted at different times to meet specific problems. The first problem arose in connection with veterans who had been discharged from service for disability, which, although it was declared by the service medical authorities at the time of discharge to have existed prior to enlistment, was not noted upon examination, acceptance, and enrollment for service. Such disability, although manifested in service, was not compensable

under the War Risk Insurance Act of October 6, 1917, until an amendment approved June 25, 1918 (40 Stat. 611), provided that, for the purposes of Section 300 (dealing only with compensation, see footnote 2, *supra,* p. 3), it should be conclusively presumed that the veteran was in sound condition at the time of enlistment.[10]

The second problem which led to an amendment of Section 200 of the Act arose in connection with veterans who, subsequent to service and within a prescribed period, developed disabilities from diseases of a character such as tuberculosis, which might well have originated in service or been aggravated thereby but which could not be proved to have originated therein. Congress accordingly provided a presumption of the service origin or aggravation of tuberculosis and neuropsychiatric disabilities developing a 10 percent degree of disability within two years after separation from service (amendment of August 9, 1921 (42 Stat. 153)), within three years after separation from service (amendment of March 4, 1923 (42 Stat. 1522)), and, finally, at any time prior to January

[10] The legislation under construction in this case originated with this amendment which was offered from the floor of the House and passed without committee consideration. The author of the amendment explained in detail its limited purpose of avoiding the denial of compensation for disability manifested in service upon the ground that it had existed prior thereto (Congressional Record, Vol. 56, Part 7, pp. 6925, 6933).

602130—44——3

1, 1925 (amendment of June 7, 1924 (43 Stat. 615)).

Service connection of disability first became a factor of significance in connection with insurance as the result of an amendment to Section 408, War Risk Insurance Act, on August 9, 1921. As a result of this legislation, later embodied in Section 304, World War Veterans' Act (*supra,* pp. 5–6), it became possible for a disabled person who was not totally permanently disabled to reinstate lapsed Government insurance provided he could show that his disability was due to service.[11]

The original restriction to compensation matters of the presumptions relative to the service origin of disabilities embodied in Section 200 led to the anomalous situation in many cases of disabilities which were deemed to be service connected for the purposes of compensation but not service connected for the purposes of reinstatement of insurance under Section 304, although both benefits depended upon service connection of the disabilities. Section 200 was amended on July 2, 1926, for the sole purpose of eliminating this inconsistency and making possible the reinstatement of insurance

[11] Reinstatement despite service-connected disability required the payment, either in cash or through the imposition of a lien on the proceeds of the policy, of all premiums in arrears, with interest thereon. Consequently reinstatement under the regulations, upon proof of good health and the payment of only two premiums, continued to be the more advantageous method of reinstatement. Prior to 1921 this had been the sole method of reinstatement.

under Section 304 by veterans whose disability was service connected only by reason of the presumptions contained in Section 200.

This 1926 amendment was sought by the Administration. Its purpose and the clear Congressional understanding of it are shown by the following statements of Veterans' Bureau officials before the Senate Committee on Finance on May 24, 1926:

> Mr. ROBERTS. Page 13, line 21, the insertion of the word "Act" instead of "section." At the present time it reads that this presumption is only for the purpose of this section; that is, for the purpose of paying compensation. We also have a provision which permits reinstatment of insurance by men who have service-connected disabilities. This is for the purpose of eliminating the necessity of those men proving service connection under the insurance provisions when their service connection is presumed for compensation purposes.
>
> Senator REED of Pennsylvania. I think it is a consistent thing to do.
>
> General HINES. Section 304 relates to insurance. This Section 200 relates to compensation.
>
> (Hearings before Committee on Finance, U. S. Senate, 69th Cong., 1st Sess., on H. R. 12175, p. 27.)

After the amendment on July 2, 1926, there were court decisions misconstruing the intent of the legislation. The most important of these was

the reported case of *Brandaw* v. *United States*, 35 F. (2d) 181 (C. C. A. 9), holding that upon the issue of total permanent disability under an insurance policy in force during the insured's military service it was error for the trial court to have refused a plaintiff's requested instruction that a veteran is presumed to have been sound at enlistment except for defects then noted, and that a veteran's neuropsychiatric disability must be regarded as originating in service (and not otherwise) if it was manifested to a 10-percent degree prior to July 1, 1925. Promptly after this decision, rendered on October 14, 1929, the Administration recommended, and Congress enacted on July 3, 1930, a further amendment to Section 200 of the Act, to make clear the original restricted intention of the 1926 amendment. This is shown by the following quotation from the report of the Senate Committee upon the bill which was enacted on July 3, 1930:

> Your committee has also changed the phraseology of the first sentence following the misconduct provision as it exists in the present law to clarify the remainder of the section. The word "act" was substituted for the word "section" in the amendment to the World War veterans' act dated July 2, 1926, in order to enable veterans to reinstate insurance under section 304 of the act, and show for that purpose that the disease from which they were suffering at the time of attempted reinstatement was of

> service origin. It was not intended by the change to enable a veteran in a suit on Government insurance to establish for the purposes of the suit that the disability on account of which the same was based was of service origin. Your committee has been informed that certain courts have so construed this section as it reads in the present law. In order to clarify the matter and show clearly the original intent of the Congress, your committee has therefore changed the word "act" to "section and section 304 of this act," on page 15, lines 2 and 3. (Senate Report 885, 71st Cong., 2d Sess., p. 8.)

It is therefore evident that in using the words "for the purposes of this Act" in the 1926 amendment Congress intended only that the presumption of sound condition at the time of enlistment embodied in Section 200 should be applicable in connection with but one other subject matter in addition to that to which the presumption had previously been applied. The presumption had theretofore applied in connection with the establishment of service origin of disability for compensation purposes; it was thereafter to apply also, in connection with service origin of disability, for the purpose of reinstatement of insurance by a disabled veteran under Section 304—but for no other purposes. It is evident that Congress regarded the presumption as affecting only those benefits predicated upon service origin of disability. The only benefit of that character other

than compensation, provided for by Section 200, was the right to reinstate insurance under Section 304. Thus the practical effect of the words "for the purposes of this Act" in the 1926 amendment was only to extend the presumption in aid of service connection for the purposes of Section 304. This congressional intention was fully recognized and stated in *United States* v. *Searls*, 49 F. (2d) 224 (C. C. A. 4). In that case the court said (p. 226):

> The effect, and we think the only effect, of this amendment was to give to the veteran the benefit of the presumption created by section 200 as to service origin of disability, not only in applications for compensation and treatment, but also in applications for reinstatement of lapsed policies.

Moreover, under the construction of Section 200 adopted by the Circuit Court of Appeals, Congress condones an active misrepresentation as a result of which an applicant disabled by preservice syphilis obtained a reinstatement of insurance under regulations and upon conditions requiring that the applicant be in good health. The result is approval, despite such deceit, of a reinstatement upon more advantageous terms than are specified in the Act for an applicant for reinstatement who is disabled by battle-incurred injuries.[12] Congress

[12] A veteran disabled by reason of battle injury could not obtain the advantages of reinstatement under the regulations (*supra*, pp. 4–5); he could not obtain any reinstatement if his

should not be credited with the intention of having made possible such unconscionable discrimination. Such discrimination is plainly no part of "the purposes of this Act"; the Circuit Court of Appeals in the *Searls case, supra,* regarded this limiting language in the statute as being of particular significance (p. 227).

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

CHARLES FAHY,
Solicitor General.

AUGUST 1944.

---

disability was total and permanent, and, in any event, he would be required to pay, or agree to the payment of, all premiums in arrears on his lapsed insurance to obtain reinstatement under the statute (Section 304 of the Act, *supra*, pp. 5–6).